



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

SUBJECT: Guidance for Review and Approval of State
Underground Injection Control (UIC) Programs and
Revisions to Approved State Programs.
GWPB Guidance #34

FROM: Victor J. Kimm, Director
Office of Drinking Water (WH-550)

TO: Water Division Directors
Regions I - X

PURPOSE

The purpose of this document is to provide guidance to EPA Regional offices on the revised process for the approval of State primacy applications and the process for approving modifications in delegated programs, including aquifer exemptions.

BACKGROUND

On January 9, 1984, the Deputy Administrator announced an Agency policy for a State program approval process placing the responsibility on Regional Administrators to recommend UIC program approval to the Administrator and making Regional Administrators clearly responsible for assuring that good, timely decisions are made. At the same time, we are reaching a point in the UIC program where States are beginning to make revisions to approved programs and we are promulgating amendments to the minimum requirements that the States must adopt within 270 days. We have reviewed the existing approval process and this Guidance spells out the adjustments necessary to comply with the Agency's policy. This new process will take effect on July 5, 1984, and applies to approval of primacy applications and substantial program revisions, which are both rulemaking and cannot be delegated by the Administrator under the Safe Drinking Water Act. This guidance also addresses review and approval of non-substantial program revisions which are the responsibility of the Regional Administrator.

I. REVIEW AND APPROVAL OF APPLICATIONS

II. PROGRAM REVISIONS

INTRODUCTION

Following EPA approval of a State UIC program, the State will from time to time make program changes which will constitute revisions to the approved program. The UIC regulations address procedures for revision of State programs at 40 CFR §145.32. These regulations direct the State to “keep the Environmental Protection Agency (EPA) fully informed of any proposed modification to its basic statutory or regulatory authority, its forms, procedures, or priorities.” The regulations differentiate between “substantial” revisions which are rulemaking and must be approved by the Administrator and “non-substantial” revisions which can be approved by a letter to the Governor.

To date EPA has encountered the following types of revisions to approved State programs:

- S Aquifer exemptions;
- S Minor changes to the delegation memorandum of agreement;
- S Regulatory and statutory changes which resulted in a more stringent program;
- S Revisions to State forms which were part of the approved program;
- S Transfer of authority from one State agency to another;
- S Alternative mechanical integrity tests.

While providing a basic framework for program revisions, the regulations are not specific in defining “substantial” and “non-substantial” program revisions. These categories are defined below.

Definition of Program Revisions

Revisions to State UIC programs require EPA approval or disapproval actions only if they are within the scope of the Federal UIC program. Aspects of the program which are beyond the scope of the Federal UIC regulations are not considered program revisions under §145.32. For example, if a State modifies permitting requirements for Class V wells, this would not be considered a program revision as long as the modified requirement was at least as stringent as the Federal UIC regulations, since the regulations do not require specific permitting of Class V wells.

The authority for approval of non-substantial revisions is delegated to the Regional Administrator. The Regions will forward a copy of the approval letter and of the approved revision to the State Program Division.

Disapproval of Program Revisions

Disapproval of a proposed State program revision may be accomplished by a letter from the Regional Administrator to the State Governor or his designee.

For all aquifer exemptions, the Regions should fill out and send to the SPD and Aquifer Exemption Sheet (Attachment 2). If the exemption constitutes a substantial program revision, or requires ODW concurrence, as much of the supporting material as feasible should be sent along. (Large maps and logs are difficult to reproduce and may be omitted.) Aquifer exemptions that constitute substantial revisions will be handled as described above. Where ODW concurrence is necessary it will be in the nature of a telephone call from the Director, SPD, because of the potential of the short approval time frames. Approval will be confirmed later by a memorandum. Guidance for the review of aquifer exemptions are included as Attachment 3.

Alternative Mechanical Integrity Tests

The authority to approve alternative mechanical integrity tests has been delegated to the Director, Office of Drinking Water. Therefore, such proposals and appropriate supporting documents should be submitted to the State Program Division. The SPD will transmit them to the UIC Technical Committee for review. If the Committee supports approval of the test, the Director of ODW will inform the Regions and approve the test as a “non-substantial” program revision.

III. RESOLUTION OF DIFFERENCES

The major effect of the Agency policy should be to speed up the resolution of issues. The policy states that the senior managers are responsible for assuring that early consultation takes place so that issues can be identified and resolved internally as early as possible. Regional Administrators are responsible for elevating to top managers those issues upon which there is internal disagreement. Differences can arise within Headquarters and between Headquarters and Regions. They will be handled as follows for both program approvals and substantial program modifications.

Within the Headquarters Review Team

If the Headquarters Review Team cannot agree on whether an issue should be raised, the Review Team memorandum will reflect the majority comments. The dissenting office may send a memorandum signed by its Office Director or equivalent to the Water Division Director explaining its issue. If the Region agrees, it will raise the issue with the State. If not, the issue will be resolved using the process outlines below.